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**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

THOMAS SCHMIDT

Plaintiff,

v.

**SECURITY CREDIT
SERVICES, LLC,
HUNTINGTON DEBT
HOLDING, LLC and ALLIANT
CAPITAL MANAGEMENT;**

Defendants

Case No.: 19-cv-00058

**COMPLAINT FOR DAMAGES
FOR VIOLATIONS OF:**

- 1.) FAIR DEBT COLLECTION
PRACTICES ACT, 15 U.S.C. §
1692 ET SEQ.; AND**
- 2.) ROSENTHAL FAIR DEBT
COLLECTION PRACTICES
ACT CAL CIV §§ 1788, ET
SEQ.; AND**
- 3.) FAIR DEBT BUYING
PRACTICES ACT CAL CIV
§§ 1788, ET SEQ.**

DEMAND FOR JURY TRIAL

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INTRODUCTION

1. This is a case about a financially responsible man who attempted to make installment payments on a leased item in any way possible – online, by check, by phone – but was unable to do so because the online payment portal was inoperative, and the company did not permit payments any other way. Defendants subsequently attempted to collect the debt in violation of State and Federal collections laws.
2. **THOMAS SCHMIDT** (“Plaintiff”), by Plaintiff’s attorney, brings this action for actual damages, statutory damages, attorney fees, and costs, against **SECURITY CREDIT SERVICES, LLC, HUNTINGTON DEBT HOLDING, LLC and ALLIANT CAPITAL MANAGEMENT** for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 et seq. (hereinafter “RFDCPA”), and for violations of the Fair Debt Buying Practices Act, California Civil Code §§ 1788.50-1788.64 (hereinafter “FDBPA”), all of which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.
3. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to the Plaintiff, or to the Plaintiff’s counsel, which Plaintiff alleges on personal knowledge.
4. While many violations are described below with specificity, this Complaint

alleges violations of the statutes cited in their entirety.

5. All violations by Defendants were knowing, willful, and intentional, and Defendants did not maintain procedures reasonably adapted to avoid any such violations.

6. Unless otherwise indicated, the use of a Defendant's name in this Complaint includes all agents, principles, managing agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of those Defendants named.

JURISDICTION AND VENUE

7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States, and pursuant to 28 U.S.C. § 1367 for pendent state law claims.

8. This action arises out of Defendants' violations Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 et seq. (hereinafter "RFDCPA"), and for violations of the Fair Debt Buying Practices Act, California Civil Code §§ 1788.50-1788.64 (hereinafter "FDBPA").

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the acts and

1 transactions occurred here, Plaintiff resides here, and Defendants transact
2 business here.

3 FDCPA AND RFDCPA

4
5 10. In enacting the FDCPA, Congress found that:

- 6 a. There is abundant evidence of the use of abusive, deceptive, and unfair debt
7 collection practices by many debt collectors. Abusive debt collection
8 practices contribute to the number of personal bankruptcies, to marital
9 instability, to the loss of jobs, and to invasions of individual privacy.
- 10 b. Existing laws and procedures for redressing these injuries are inadequate to
11 protect consumers.
- 12 c. Means other than misrepresentation or other abusive debt collection
13 practices are available for the effective collection of debts.
- 14 d. Abusive debt collection practices are carried on to a substantial extent in
15 interstate commerce and through means and instrumentalities of such
16 commerce. Even where abusive debt collection practices are purely
17 intrastate in character, they nevertheless directly affect interstate
18 commerce.
- 19 e. It is the purpose of this title to eliminate abusive debt collection practice by
20 debt collectors, to insure that those debt collectors who refrain from using
21 abusive debt collection practices are not competitively disadvantaged, and
22 to promote consistent State action to protect Consumers against debt
23 collection abuses. 15 U.S.C. § 1692.

24 11. Similarly, when enacting the RFDCPA, the California Legislature found that:

25 The banking and credit system and grantors of credit to consumers
26 are dependent upon the collection of just and owing debts. Unfair or
27 deceptive collection practices undermine the public confidence
28 which is essential to the continued functioning of the banking and
credit system and sound extensions of credit to consumers. Cal.
Civil Code § 1788.1(a)(1).

12. The FDCPA and the RFDCPA are both strict liability statutes. That is, a
plaintiff need not prove intent or knowledge on the part of the debt collector to

1 establish liability. *See Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055,
 2 1060-61 (9th Cir. 2011); *Donohue v. Quick Collect*, 592 F.3d 1027, 1030 (“[t]he
 3 FDCPA is a strict liability statute that makes debt collectors liable for violations
 4 that are not knowing or intentional”).

- 5
 6 13. To further protect consumers, claims under the FDCPA and RFDCPA are to be
 7 judged according to the “least sophisticated debtor” or “least sophisticated
 8 consumer” standard. *Gonzales* at 1061. This standard is lower than the
 9 “reasonable debtor” standard, and is specifically designed to protect consumers
 10 of below average and sophistication or intelligence. *Id.* In addition, a plaintiff
 11 need not even have actually been misled or deceived by the debt collector’s
 12 communication. Rather, liability depends on whether the *hypothetical* least
 13 sophisticated debtor – someone who is uninformed and naïve – would have
 14 likely been misled. *Id.*; *see also Tourgeman v. Collins Financial Servs.*, 755
 15 F.3d 1109, 1119 (9th Cir. 2014).

16 17 18 19 INTRADISTRICT ASSIGNMENT

- 20
 21 14. Intradistrict assignment to the San Francisco Division or Oakland Division is
 22 proper because this case’s category is not excepted by Civil L.R. 3-2(c) and a
 23 substantial part of the events or omissions which give rise to the claim occurred
 24 in the county of CONTRA COSTA.

25 26 PARTIES

- 27 15. Plaintiff is a natural person who resides in the County of Contra Costa, State of
 28

1 California. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
2 1692a(3) and by Cal. Civ. Code § 1785.3(b), and a “Debtor” as that term is
3 defined by California Civil Code § 1788.2(h).
4

5 16. Defendant Security Credit Services, LLC (hereinafter “Defendant SCS”) is a
6 Mississippi limited liability company operating from an address of 306 Enterprise
7 Drive, Oxford, MS 38655, and is a “Debt Collector” as that term is defined by 15
8 U.S.C. § 1692a(6) and Cal. Civ. Code § 1788.2(c) because it regularly uses the
9 mails and/or the telephone to collect, or attempt to collect, directly or indirectly,
10 defaulted consumer debts that it did not originate. It operates a nationwide debt
11 collection business and attempts to collect debts from consumers in virtually
12 every state, including consumers in the State of California. Its principal, if not
13 sole, business purpose is the acquisition and collection of defaulted consumer
14 debts originated by others, and, in fact was acting as a debt collector as to the
15 delinquent consumer debt it attempted to collect from Plaintiff.
16
17

18
19 17. Defendant Huntington Debt Holding, LLC (hereinafter “Defendant HDH”) is
20 a New York limited liability company operating from an address of 80 State
21 Street, Albany, NY 12207, and is a “Debt Collector” as that term is defined by 15
22 U.S.C. § 1692a(6) and Cal. Civ. Code § 1788.2(c) because it regularly uses the
23 mails and/or the telephone to collect, or attempt to collect, directly or indirectly,
24 defaulted consumer debts that it did not originate. It operates a nationwide debt
25 collection business and attempts to collect debts from consumers in virtually
26
27
28

1 every state, including consumers in the State of California. Its principal, if not
2 sole, business purpose is the collection of defaulted consumer debts originated by
3 others, and, in fact was acting as a debt collector as to the delinquent consumer
4 debt it attempted to collect from Plaintiff.
5

6 18. Defendant Alliant Capital Management (hereinafter “Defendant ACM”) is a
7 New York corporation operating from an address of 210 John Glenn Drive,
8 Amherst, NY 14228, and is a “Debt Collector” as that term is defined by 15
9 U.S.C. § 1692a(6) and Cal. Civ. Code § 1788.2(c) because it regularly uses the
10 mails and/or the telephone to collect, or attempt to collect, directly or indirectly,
11 defaulted consumer debts that it did not originate. It operates a nationwide debt
12 collection business and attempts to collect debts from consumers in virtually
13 every state, including consumers in the State of California. Its principal, if not
14 sole, business purpose is the collection of defaulted consumer debts originated by
15 others, and, in fact was acting as a debt collector as to the delinquent consumer
16 debt it attempted to collect from Plaintiff.
17

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19
20
21 19.

22 20. This case involves money due or owing or alleged to be due or owing from a
23 natural person by reason of a consumer credit transaction. As such, this action
24 arises out of a “consumer debt” and “consumer credit” as those terms are
25 defined by Cal. Civ. Code § 1788.2(f).
26

27 21. This case involves Plaintiff’s “Charged-off consumer debt(s)” as that term is
28

defined by Cal. Civ. Code § 1788.50(a)(2)

22. Defendant Security Credit Services, LLC is a “Debt buyer” as that term is defined by Cal. Civ. Code § 1788.50(a)(1) and is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes.

23. Plaintiff is informed and believes, and thereon allege that at all times herein mentioned Named Defendants were agents, officers, directors, managing agents, employee and/or joint venturer of each of their co-defendants and, in doing the things hereafter mentioned, each was acting in the scope of his authority as such agent, officer, director, managing agent, employee, and/or joint venturer, and with the permission, knowledge, ratification, and consent of their co-defendants, and each of them. Any reference hereafter to “Defendants” without further qualification is meant by Plaintiff to refer to each Defendant, and all of them, named above.

FACTUAL ALLEGATIONS

24. Plaintiff is an individual residing in the County of Contra Costa in the State of California.

25. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendants conducted and continue to conduct business in the State of California.

26. Defendant SCS’s business consists solely of the acquisition and collection of delinquent consumer debts.

- 1 27. Defendants HDH and ACM's businesses consist solely of the collection of
2 delinquent consumer debts.
- 3 28. In or around December 2017, Plaintiff leased a washer and dryer from Sears
4 Department Stores. The lease term was twelve months, with an option to purchase
5 after five installment payments under the lease, or to continue the lease payments.
6
- 7 29. Plaintiff made five installment payments, and fell behind on his payments because
8 the payment portal through which Plaintiff had successfully made the five
9 installment payments was suddenly inoperable.
10
- 11 30. Defendant SCS purchased the charged-off debt from the original creditor, Sears,
12 and hired Defendants HDH and ACM as debt collectors for the subject debt.
13
- 14 31. The Defendants, and each of them, all communicated with the Plaintiff at some
15 point regarding the debt at issue. The Defendants did not notify Plaintiff each time
16 they communicated with Plaintiff that the communication was from a debt
17 collector.
18
- 19 32. None of the Defendants provided Plaintiff, within five days of the initial
20 communication and/or in the initial communication, with a writing which
21 contained a statement that unless the consumer disputes the validity of the debt,
22 or any portion thereof within thirty days of the initial communication that the debt
23 will be assumed to be valid by the debt collector.
24
- 25 33. None of the Defendants provided Plaintiff, within five days of the initial
26 communication and/or in the initial communication, with a writing which
27
28

1 contained a statement that if the consumer notified the Defendant(s) in writing
2 within 30 days that the debt or any portion is disputed, the Defendant(s) would
3 obtain verification of the debt.
4

5 34. None of the Defendants provided Plaintiff, within five days of the initial
6 communication and/or in the initial communication, with a writing which
7 contained a statement that upon the consumer's written request within the 30-day
8 period, the Defendant(s) would provide the consumer with the name and address
9 of the original creditor.
10

11 35. None of the Defendants ever provided Plaintiff with the notice required by the
12 Fair Debt Buying Practices Act.
13

14 36. None of the Defendants are the original creditor for the debt at issue in this case.
15

16 37. None of the Defendants provided a written notice to Plaintiff which included the
17 description of debtor rights stated in Cal. Civ. Code §1812.700, which states, "The
18 state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt
19 Collection Practices Act require that, except under unusual circumstances,
20 collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass
21 you by using threats of violence or arrest by using obscene language. Collectors
22 may not use false or misleading statements or call you at work if they know or
23 have reason to know that you may not receive personal calls at work. For the most
24 part, collectors may not tell another person, other than your attorney or spouse,
25 about your debt. Collectors may contact another person to confirm your location
26
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1 or enforce a judgment. For more information about debt collection activities, you
2 may contact the Federal Trade Commission at 1-877-FTC-HELP or
3 www.ftc.gov.”
4

5 **ACTUAL DAMAGES**

6 38. Plaintiff has suffered actual damages as a result of these illegal collection and
7 intimidation tactics by this Defendant in the form of, invasion of privacy, personal
8 embarrassment, loss of personal reputation, loss of productive time, nausea, and
9 feelings of fear, anxiety, hopelessness, anger, persecution, emotional distress,
10 frustration, upset, humiliation, and embarrassment, amongst other negative
11 emotions.
12

13 **CAUSES OF ACTION CLAIMED BY PLAINTIFF**

14 **COUNT I**

15 **VIOLATION OF § 1692E OF THE FDCPA**

16 ***AGAINST ALL DEFENDANTS***

17 39. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
18 as though fully stated herein.
19

20 40. A debt collector violates § 1692e(11) of the FDCPA when it fails to disclose in
21 the initial written communication and/or in the initial oral communication with
22 the consumer that the debt collector is attempting to collect a debt and that any
23 information obtained will be used for that purpose, and failure to disclose in
24 subsequent communications that the communication is from a debt collector.
25
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1 41. Defendants, and each of them, violated § 1692e when they each, among other
2 qualifying actions and omissions, failed to disclose to the Plaintiff that each and
3 every communication from Defendants, and each of them, was from a debt
4 collector.
5

6 **COUNT II**

7 **VIOLATION OF § 1692G OF THE FDCPA**

8 ***AGAINST ALL DEFENDANTS***

9
10 42. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
11 as though fully stated herein.
12

13 43. A debt collector violates § 1692g of the FDCPA when it fails, within five days
14 after the initial communication with a consumer, to send certain notice to the
15 consumer.
16

17 44. Defendants, and each of them, violated § 1692g when they each, among other
18 qualifying actions and omissions, willfully and without justification, failed within
19 five days of initially contacting Plaintiff to send him the notices required by §
20 1692g(a).
21

22 **COUNT III**

23 **VIOLATION OF § 1788.17 OF THE RFDCPA**

24 ***AGAINST ALL DEFENDANTS***

25
26 45. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
27 as though fully stated herein.
28

- 1 46. A defendant violates § 1788.17 of the RFDCPA when it fails to comply with
2 the provisions of 15 U.S.C. § 1692b to 1692j, inclusive.
- 3 47. Defendant violated § 1788.17 of the RFDCPA when they each, among other
4 qualifying actions and omissions, failed to disclose to the Plaintiff that each and
5 every communication from Defendants, and each of them, was from a debt
6 collector, in violation of 15 U.S.C. § 1692e(11).
7
- 8 48. Defendant violated § 1788.17 of the RFDCPA when they each, among other
9 qualifying actions and omissions, willfully and without justification, failed within
10 five days of initially contacting Plaintiff to send him the notices required by §
11 1692g(a), in violation of 15 U.S.C. § 1692g(a).
12
- 13 49. Defendants violated § 1788.17 of the RFDCPA when they willfully engaged in
14 conduct, the natural consequence of which the violation of 15 U.S.C. § 1692e
15 and § 1692g.
16
17

18 **COUNT IV**

19 **VIOLATION OF § 1812.700 OF THE RFDCPA**

20 ***AGAINST ALL DEFENDANTS***

- 21
- 22 50. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
23 as though fully stated herein.
24
- 25 51. A debt collector violates § 1812.700 of the RFDCPA when it fails to send in the
26 first written notice to a consumer the exact notice stated in § 1812.700(a).
27
- 28 52. Defendants, and each of them, violated § 1812.700 when they each, among other

1 qualifying actions and omissions, willfully and without justification, failed to
2 provide Plaintiff with the exact notice stated in §1812.700(a) in the first written
3 communication each Defendant sent to Plaintiff, whether via mail, e-mail, or
4 otherwise in writing.
5

6 **COUNT V**

7 **VIOLATION OF § 1788.52(D)(1) OF THE FDBPA**

8 ***AGAINST DEFENDANT SECURITY CREDIT SERVICES, LLC***

9
10 53. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
11 as though fully stated herein.

12
13 54. A debt buyer violates § 1788.52(d)(1) of the FDBPA when it fails to send in the
14 first written communication to the alleged debtor, the exact notice stated in §
15 1788.52(d)(1).
16

17 55. Security Credit Services, LLC violated § 1788.52(d)(1) of the FDBPA when it
18 willfully and without justification, failed to provide Plaintiff with the exact notice
19 stated in §1788.52(d)(1) in the first written communication it sent to Plaintiff,
20 whether via mail, e-mail, or otherwise in writing.
21

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff prays that judgment be entered against each Defendant
24 for:
25

- 26 a) Award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) (FDCPA),
27 and pursuant to Cal. Civ. Code § 1788.30 (RFDCPA) against each
28

1 Defendant and for Plaintiff, and pursuant to Cal. Civ. Code § 1788.62

2 (FDBPA) against Defendant SCS and for Plaintiff; and

3 b) Award of statutory damages in the amount of \$1,000.00 pursuant to 15
4 U.S.C. § 1692k(a)(1) (FDCPA) against each Defendant and for Plaintiff,
5 and,
6

7 c) Award of statutory damages in the amount of \$1000.00 pursuant to Cal.
8 Civ. Code § 1788.30 (RFDCPA) against each Defendant and for Plaintiff,
9 and,
10

11 d) Award of statutory damages in the amount of \$1,000 for each violation
12 as the court deems proper pursuant to Cal. Civ. Code § 1788.62 (FDBPA)
13 against Defendant SCS and for Plaintiff, and,
14

15 e) Award of costs of litigation and reasonable attorney's fees pursuant to 15
16 U.S.C. § 1692k(a)(1) (FDCPA), pursuant to Cal. Civ. Code § 1788.30
17 (RFDCPA), and pursuant to Cal. Civ. Code § 1788.62 (FDBPA) against
18 each Defendant and for Plaintiff, and,
19

20 f) Award to Plaintiff of such other and further relief as may be just and
21 proper.
22

23 **CERTIFICATION OF INTERESTED PARTIES**
24

25 Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other
26 than the named parties, there is no such interest to report.
27
28

BY: /s/ LAUREN B. VEGGIAN
LAUREN B. VEGGIAN, ESQ.

TRIAL BY JURY IS DEMANDED.

56. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

THE CARDOZA LAW CORPORATION

DATED: January 4, 2019

BY: /s/ LAUREN B. VEGGIAN
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